

(d) *Nonallowable direct nursing facility payments.* Costs for prescription drugs, physician services, dental services, dentures, podiatry services, eyeglasses, appliances, x-rays, laboratory services and other materials or services covered by payments, other than MA or Medicare Part A, made directly to nursing facilities, including Medicare Part B, Champus, Blue Cross, Blue Shield or other insurers or third parties, are not allowable in determining net operating costs.

§ 1187.60. Prudent buyer concept.

The purchase or rental by a nursing facility of services, movable property and supplies, including pharmaceuticals, may not exceed the cost that a prudent buyer would pay in the open market to obtain these items, as described in the Medicare Provider Reimbursement Manual (CMS Pub. 15-1).

§ 1187.61. Movable property cost policies

(a) *Actual acquisition cost during cost report period.* Except as otherwise specified in this section and subject to §§ 1187.58 and 1187.60 (relating to costs of related parties; and prudent buyer concept), a nursing facility's allowable movable property shall be limited to the nursing facility's actual acquisition cost of movable property placed in service during the cost report period.

(b) *Determination of acquisition cost.* Except in situations where an item of movable property is obtained from a related party, the acquisition cost of that item shall be determined as follows:

(1) Acquisition cost is determined on a per-unit basis.

(2) When an item is purchased, the acquisition cost of that item is equal to the total actual purchase price of the item, regardless of whether the total price is paid in full at the time of purchase or over a period of time, plus the following: any required sales tax, shipping charges and installation charges.

(3) When an item of movable property is leased or rented, the acquisition cost is limited to the lower of: the actual annual lease or rental payments made by the nursing facility; or the imputed purchase price of the item, pro-rated on a straight-line basis over the useful life of the item, as identified in the most recent *Uniform Chart of Accounts and Definitions for Hospitals* published by the American Hospital Association at the time the item is leased or rented. For purposes of this section, the imputed purchase price of a leased or rented item is the lesser of:

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- (i) The suggested list price from the manufacturer of the item;
- (ii) The actual discounted price of the item available at the time of lease or rental;
- (iii) The purchase price for the item set forth in the lease or rental agreement;
- (iv) If the lessor is a related party, the related party's acquisition cost as determined in accordance with paragraph (2).

(4) When an item is acquired as the result of a gift or donation, the acquisition cost of that item is deemed to be the appraised depreciated replacement cost of the item provided that, on a date prior to the submission of the MA-11 for the period in which the item is acquired, the nursing facility obtains an appraisal of the item's depreciated replacement cost from a licensed appraiser and submits a copy of the written report of the appraisal to the Department with its MA-11. If the nursing facility fails to obtain an appraisal of the item's depreciated replacement cost from a licensed appraiser within the time period set forth in this section or if the nursing facility fails to submit a copy of the written report of the appraisal to the Department with its MA-11, the acquisition cost of the donated item or gift is deemed to be \$0.

(5) When an item is acquired by a trade-in, the acquisition cost of the item shall be the sum of the remaining book value of the item traded-in plus any acquisition cost of the newly acquired item, computed in accordance with paragraphs 2, 3, and 4. The remaining book value of the item shall be determined based upon the useful life of the item, using the *Uniform Chart of Accounts and Definitions for Hospitals* published by the American Hospital Association, and depreciation computed on a straight-line basis.

(6) When an item is loaned to the nursing facility without charge, the acquisition cost of that item is deemed to be \$0.

(7) When an item is covered by a standard express warranty, the cost of that warranty is included in the acquisition cost of the item. The cost of any extended warranty is not included in the acquisition cost of the item.

(8) When an item is acquired from a related party, the acquisition cost of the item shall be determined under § 1187.58.

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(c) Offsets to reported cost of movable property.

(1) If a nursing facility conveys or otherwise transfers movable property acquired during a cost report period beginning on or after January 1, 2001, to any other person as the result of a sale, trade-in, gift, assignment or other transaction, an offset will be made against the nursing facility's allowable movable property costs in the year in which the conveyance or transfer occurs. The amount of the offset will be the greater of the amount paid or credited to the nursing facility for the item by the person to whom the item is conveyed or transferred or the remaining book value of the item on the date the item is conveyed or transferred, as determined based upon the useful life of the item, using the *Uniform Chart of Accounts and Definitions for Hospitals* published by the American Hospital Association, and depreciation computed on a straight-line basis.

(2) If a nursing facility removes from service an item acquired during a cost report period beginning on or after January 1, 2001, before the expiration of the useful life of the item, determined using the *Uniform Chart of Accounts and Definitions for Hospitals* published by the American Hospital Association, an offset will be made against the nursing facility's allowable movable property costs in the year in which the item is removed from service. The amount of the offset will be the remaining book value of the item, as determined based upon the *Uniform Chart of Accounts and Definitions for Hospitals* published by the American Hospital Association, and depreciation computed on a straight-line basis.

(3) If, for movable property acquired during a cost report period beginning on or after January 1, 2001, a nursing facility receives a refund, money or credit under a lease or rental agreement; or money or credit as a result of a trade-in; or money, including insurance proceeds or damages, as the result of recovery of a loss related to that movable property, the amount received by the nursing facility will be offset against the nursing facility's allowable movable property costs in the year in which the refund money or credit is received.

(4) If a nursing facility fails to liquidate all or part of the acquisition cost of an item reported on the MA-11 during a cost report period beginning on or after January 1, 2001 in accordance with § 1187.52(b) (relating to allowable cost policies) the unliquidated amount will be offset against the nursing facility's allowable movable property cost in a subsequent fiscal period.

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(5) If a nursing facility receives a rebate on an item acquired during a cost report period beginning on or after January 1, 2001, the rebate amount received by the nursing facility will be offset against the nursing facility's allowable movable property costs in the year in which the refund money or credit is received.

(d) Losses incurred on the sale, transfer or disposal of movable property are not allowable costs.

(e) The acquisition cost of movable property that is rented or leased is an allowable cost only if the following requirements are met:

(1) The agreement to rent or lease the movable property shall be in writing, identify each item of movable property that is being rented or leased, identify any other services or supplies that are being provided under the agreement, identify the term of the agreement, the payment intervals, and the amount of the periodic payments and total payments due under the agreement.

(2) The agreement to rent or lease the movable property shall set forth a suggested purchase price for each item of movable property rented or leased.

SUBCHAPTER F. COST REPORTING AND AUDIT REQUIREMENTS

§ 1187.71. Cost reporting.

(a) A nursing facility shall report costs to the MA Program by filing an acceptable MA-11 with the Department. Costs in the MA-11 are:

(1) *Resident care costs.*

- (i) Nursing.
- (ii) Director of nursing.
- (iii) Related clerical staff.
- (iv) Practitioners.
- (v) Medical director.
- (vi) Utilization and medical review.

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- (vii) Social services.
- (viii) Resident activities.
- (ix) Volunteer services.
- (x) Pharmacy-prescription drugs.
- (xi) Over-the-counter drugs.
- (xii) Medical supplies.
- (xiii) Laboratory and X-rays.
- (xiv) Physical, occupational and speech therapy.
- (xv) Oxygen.
- (xvi) Beauty and barber services.
- (xvii) Minor movable property
- (xviii) Other supplies and other resident care costs.

(2) *Other resident related costs.*

- (i) Dietary, including food, food preparation, food service, and kitchen and dining supplies.
- (ii) Laundry and linens.
- (iii) Housekeeping.
- (iv) Plant operation and maintenance.
- (v) Minor movable property.
- (vi) Other supplies and other resident related costs.

(3) *Administrative costs.*

- (i) Administrator.
- (ii) Office personnel.
- (iii) Management fees.

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- (iv) Home office costs.
- (v) Professional services.
- (vi) Determination of eligibility.
- (vii) Gift shop.
- (viii) Advertising.
- (ix) Travel/entertainment.
- (x) Telephone.
- (xi) Insurance.
- (xii) Other interest.
- (xiii) Legal fees.
- (xiv) Federal/State Corporate/Capital Stock Tax.
- (xv) Officers' life insurance.
- (xvi) Amortization-administrative costs.
- (xvii) Office supplies
- (xviii) Minor movable property.
- (xix) Other supplies and other administrative costs.

(4) *Capital costs.*

- (i) Real estate tax cost.
- (ii) Major movable property.
- (iii) Depreciation.
- (iv) Capital interest.
- (v) Rent of nursing facility.
- (vi) Amortization - capital costs.

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(b) The MA-11 shall identify allowable direct, indirect, ancillary, labor and related party costs for the nursing facility and residential or other facility.

(c) The MA-11 shall identify costs of services, movable property and supplies furnished to the nursing facility by a related party and the rental of the nursing facility from a related party.

(d) The MA-11 shall be based on accrual basis financial and statistical records maintained by the nursing facility. The cost information contained in the cost report and in the nursing facility's records shall be current, accurate and in sufficient detail to support the reported costs.

(e) An acceptable cost report is one that meets the following requirements:

(1) Applicable items are fully completed in accordance with the instructions incorporated in the MA-11, including the necessary original signatures on the required number of copies.

(2) Computations carried out on the MA-11 are accurate and consistent with other related computations.

(3) The treatment of costs conforms to the applicable requirements of this chapter.

(4) Required documentation is included.

(5) The MA-11 is filed with the Department within the time limits in §§ 1187.73, 1187.75 and 1187.76 (relating to annual reporting; final reporting and reporting for new nursing facilities).

(f) The nursing facility shall maintain adequate financial records and statistical data for proper determination of costs under the MA Program. The financial records shall include lease agreements, rental agreements, ledgers, books, records and original evidence of cost -- purchase requisitions, purchase orders, vouchers, vendor invoices, inventories, time cards, payrolls, bases for apportioning costs and the like -- which pertain to the determination of reasonable costs.

(g) Records and other information described in subsection (d) are subject to periodic verification and audit. Costs which are adequately documented are allowable.

(h) The nursing facility shall maintain the records pertaining to each cost report for at least 4 years following the date the nursing facility submits the MA-11 to the Department.

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§ 1187.72. Cost reporting for Medicare Part B type services.

(a) Nursing facilities shall utilize Medicare as a primary payor resource when appropriate, under § 1187.102 (relating to utilizing Medicare as a resource).

(b) If Medicare is the primary payor resource, the nursing facility shall exclude from allowable costs operating costs incurred in or income derived from the provision of Medicare Part B coverable services to nursing facility residents. The nursing facility shall attach to the MA-11 a copy of the cost report the nursing facility submits to Medicare for the Part B services and, when available, submit a copy of the Medicare final audit, including audit adjustments.

(c) If there is a discrepancy between the costs on the Medicare cost report or, if available, the Medicare audit report, and the adjustments made by the nursing facility on the MA-11 to exclude Medicare Part B costs, the Department will make the necessary adjustments to conform to the Medicare report.

§ 1187.73. Annual reporting.

(a) The fiscal year, for purposes of the MA Program for nursing facilities, shall be either January 1 through December 31 or July 1 through June 30 as designated by the nursing facility. The fiscal year designated by the nursing facility may not be changed except in the event of the sale of the nursing facility to a new owner.

(b) A nursing facility shall submit an acceptable MA-11 to the Department within 120 days following the June 30 or December 31 close of each fiscal year as designated by the nursing facility. An acceptable MA-11 is one that meets the requirements in § 1187.71(e) (relating to cost reporting). No request for an extension to file an annual cost report will be granted except in accordance with § 1187.1(d)(2) (relating to policy). The report shall be prepared using the accrual basis of accounting and shall cover a fiscal period of 12 consecutive months.

§ 1187.74. Interim reporting.

A nursing facility may not file interim cost reports.

§ 1187.75. Final reporting.

(a) A nursing facility that enters into a termination agreement or an agreement of sale, or is otherwise undergoing a change of ownership or is withdrawing or being terminated as a nursing facility, shall file an acceptable final MA-11 cost report as well as outstanding annual cost reports with the Department within 90 days of the effective date of the termination, transfer, withdrawal or change of ownership and shall provide financial and statistical records to the Department for auditing. An acceptable MA-11 is one that meets the requirements in § 1187.71(e) (relating to cost reporting).

(b) A nursing facility may request an extension to file its final cost reports as required by subsection (a) of up to 30 days from the date the cost reports are due if the nursing facility's request is received by the Department prior to the expiration of the 60th day of the 90-day period specified in subsection (a); the reasons for the extension request and the amount of time requested are specified; and the requirements of § 1187.1(d) (relating to policy) are met. Further extensions will not be granted. The denial of a request for an extension is an adverse action appealable in accordance with § 1187.141 (relating to nursing facility's right to appeal and to a hearing). Failure to appeal a denial within the time period provided precludes any appeal or challenge relating to the denial in another proceeding.

§ 1187.76. Reporting for new nursing facilities.

Nursing facilities beginning operations during a fiscal period shall prepare an MA-11 from the date of certification for participation to the end of the nursing facility's fiscal year.

§ 1187.77. Auditing requirements related to cost report.

(a) The Department will audit acceptable cost reports filed to verify nursing facility compliance with:

- (1) This chapter.
- (2) Chapter 1101 (relating to general provisions).
- (3) The schedules and instructions attached to the MA-11.

(b) A nursing facility shall make financial and statistical records to support the nursing facility's cost reports available to State and Federal representatives upon request.

(c) The Department will conduct audits in accordance with auditing requirements set forth in Federal regulations and generally accepted government auditing standards.

(d) The Department will conduct an audit of each acceptable cost report with an end date of June 30, 1996, or December 31, 1996, and thereafter within 1 year of the Department's acceptance of the cost report. This subsection will not apply if the nursing facility is under investigation by the Attorney General.

(e) The auditor will certify to the Department the allowable cost for the nursing facility to be input into the NIS database for use in determining the median costs.

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(f) A nursing facility that has certified financial statements, Medicare intermediary audit reports with adjustments and Medicare reports for the reporting period shall submit these reports with its cost report, at audit or when available.

§ 1187.78. Accountability requirements related to resident personal fund management.

(a) A nursing facility may not require residents to deposit their personal funds with the nursing facility. A nursing facility shall hold, safeguard and account for a resident's personal funds upon written authorization from the resident in accordance with this section and other applicable provisions in State and Federal law.

(b) A resident's personal funds may not be commingled with nursing facility funds or with the funds of a person other than another resident.

(c) A resident's personal funds in excess of \$50 shall be maintained in an interest bearing account, and interest earned shall be credited to that account.

(d) A resident's personal funds that do not exceed \$50 may be maintained in a noninterest bearing account, interest bearing account or petty cash fund.

(e) Statements regarding a resident's financial record shall be available upon request to the resident or to the resident's legal representative.

(f) The nursing facility shall notify each resident that receives MA benefits when the amount in the resident's personal fund account reaches \$200 less than the SSI resource limit for one person.

(g) Within 60 days of the death of a resident, the nursing facility shall convey the resident's funds and a final accounting of those funds to the individual or probate jurisdiction administering the resident's estate.

(h) The nursing facility may not impose a charge against the personal funds of a resident for an item or service for which payment is made under MA or Medicare.

(i) The nursing facility shall maintain records relating to its management of residents' personal funds for a minimum of 4 years. These records shall be available to Federal and State representatives upon request.

(j) The nursing facility shall purchase a surety bond or otherwise provide assurances of the security of personal funds of the residents deposited with the nursing facility.

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